IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.5478 of 2006

Mr.Vilas M. Patil Petitioner

Vs.

The Divisional Controller,
Maharashtra State Road Transport
Corporation Respondent

Mr.Nitin Gangal for petitioner.

CORAM: B.H.MARLAPALLE,J.

August 16, 2006.

P.C.

1. Heard Mr.Gangal, the learned counsel for the petitioner who was working as a Conductor with the Respondent - Corporation i.e. the Maharashtra State Road Transport Corporation, Palghar Division, Dist. Thane.

2. On 31/3/1999 he was on duty as a Conductor on the Corporation bus plying from Palghar to Hatne and the said bus was checked at Manor when there were 25 passengers. One lady passenger by name Smt.Kunda Raghu More had a bus ticket of Rs.4/-. She stated to

the checking official that she had got into the bus from Palghar and was gong to Manor. She further stated that she had handed over Rs.10/- to the petitioner. He returned Rs.3/- and gave a ticket of Rs.4/-. When the petitioner was asked by the checking official, he stated that the said lady had got into the bus at Adivasi Pada and not at Palghar. In addition on checking his cash it was noticed that he had an amount of Rs.50.50 in excess. The petitioner was issued charge-sheet dated 23/4/1999 and thereafter he was issued show cause notice dated 10/11/2000 calling upon him to submit his explanation as to why he should not be dismissed from service. As soon as he received the said show cause notice, he filed Complaint (ULP) No.483 of 2000.

3. The Labour Court on assessment of the evidence placed before it by the respective parties held that the charges were proved but the punishment proposed i.e. dismissal was shockingly disproportionate to the nature of charges and, therefore, the employer was guilty of unfair labour practice but did not specify any particular clause of Item 1 of Schedule IV of the MRTU & PULP Act, 1971. The Labour Court directed the respondent to continue the complainant

in the employment and impose punishment of stoppage of two annual increments with cumulative effect by its order dated 7/4/2003.

4. The Corporation, therefore, approached the Industrial Court in Revision Application (ULP) No.171 of 2003 whereas the employee filed Revision Application (ULP) No.115 of 2005. The Industrial Court allowed the first revision but dismissed the revision application filed by the petitioner. The judgment and order of the Labour Court was quashed and set aside as being perverse and unsustainable in law. Hence this petition.

5. The lady passenger was an illiterate Adivasi woman and in her statement which was recorded in the presence of the petitioner she had disclosed that she got into the bus at Palghar and was going to Manor, she had paid an amount of Rs.10/- to the petitioner and she got back Rs.3/- along with a ticket of Rs.4/- instead of Rs.7/-. The petitioner in his statement made conflicting disclosures about the said passenger and in his statement he had admitted at the first place that the lady got into the bus at Palghar but subsequently he stated that she boarded the bus at

Adivasi Pada. He had no explanation as to how the excess cash was found. The petitioner being the employee of the Respondent - Corporation was undoubtedly a public servant. On the issue of his past record of service, the Industrial Court noted that in the tenure of his 16 years of service he was punished on eleven occasions and all these occasions were directly related to the revenue amount to be collected for the Corporation. On two occasions he was punished by imposing penalty of Rs.20/- and on seven occasions he was awarded stoppage of increment varying from the period of six months to three years. In these obtaining circumstances, the Industrial Court held that the view taken by the Labour Court was perverse and patently erroneous. Once the employee was held to be guilty of the acts of misconduct, there was no scope for the Labour Court to interfere with the quantum of punishment, more so when it related to the misappropriation of the Corporation funds and the amount of misappropriation is immaterial. The Industrial Court was right in stepping in to correct the Labour Court's order and to dismiss the complaint.

6. Hence the challenge to the Industrial Court's

order is devoid of merits and the same must fail at the threshold. The petition is hereby rejected summarily.

(B.H.MARLAPALLE,J.)